

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 No. 1:13-cr-10164-WGY-ALL

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5
6 UNITED STATES OF AMERICA

7 vs.

8
9 MICHAEL BOURQUE, et al

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13
14 For Hearing Before:
15 Judge William G. Young

16 Motion to Suppress (Continued.)

17
18 United States District Court
19 District of Massachusetts (Boston)
20 One Courthouse Way
21 Boston, Massachusetts 02210
22 Thursday, March 13, 2014

23 *****

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25 Official Court Reporter
United States District Court
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1 P R O C E E D I N G S

2 (Begins, 2:00 p.m.)

3 THE CLERK: Now hearing Criminal Matter
4 13-10164, the United States of America versus Bourque,
5 et al.

6 THE COURT: Good afternoon, counsel. Thank
7 you for attending on this session of court on short
8 notice. It was a medical issue that kept me from
9 hearing the matter tomorrow as I had intended and
10 Mr. Apfel had told me of this preexisting situation, so
11 I then pushed it back, and if that's back into this
12 afternoon, if that's caught you short, and I don't think
13 it has in terms of the principal arguments, but I fully
14 understand.

15 Briefly could people introduce themselves, who
16 they represent, and if you're covering for other
17 attorneys would you let me know that, starting with the
18 government.

19 MR. YOON: Yes, your Honor. Michael Yoon for
20 the government with Neil Gallagher, who will be arguing
21 today's motion.

22 THE COURT: Thank you.

23 MR. PALMER: John Palmer for Brian Chisholm
24 who's seated to my right.

25 MR. APFEL: Good afternoon, your Honor. Dave

1 Apfel and Robin Schwartz for Mr. Newton, who is in the
2 courtroom today.

3 THE COURT: Thank you.

4 MS. FELDMAN-RUMPLER: Good afternoon, your
5 Honor, Leslie Feldman-Rumpler for Michael Roy.

6 MR. BARRON: Good afternoon, your Honor.
7 Kevin Barron for David Akasa, who's in custody
8 presently.

9 MR. PARKER: Peter Parker for Mr. McGuire.
10 Good afternoon, your Honor.

11 MR. DEMISSIE: Good afternoon, your Honor.
12 Derege Demissie for Phillip Goolst. I'm also standing
13 in for Attorney John Swomley.

14 THE COURT: Thank you.

15 MR. MCBRIDE: Good afternoon, your Honor.
16 Devin McBride on behalf of Mr. Raymond Panaggio. I'm
17 also standing in for Attorney Will Korman who represents
18 Thomas Ehwa.

19 THE COURT: Thank you.

20 MR. SCULLY: Good afternoon, Liam Scully for
21 Sean Cotter. And, your Honor, I have another matter
22 scheduled at 2:30, and with the Court's permission, if
23 this hearing is still going on, I may quietly excuse
24 myself.

25 THE COURT: And of course you may.

1 MR. SCULLY: Thank you, your Honor.

2 THE COURT: All right. Let me tee this up a
3 bit to sharpen the arguments. I think it's clear, but
4 I'll make it clear for the record.

5 This matter got off on the wrong foot and it's
6 entirely my responsibility. When I first looked at the
7 moving papers, I had devised, in my own mind, a way to
8 handle it, as I explained last time, that I would handle
9 it as a matter of authentication at the time of trial,
10 and that commended itself to me because it put the
11 government to their heightened burden of proof. I did
12 allow oral argument, but I stuck to my guns and that's
13 how the hearing ended.

14 This does prove the value of oral argument because
15 when I went back and reflected, I have come to the
16 determination that I cannot handle the matter that way,
17 that's not what the statute contemplates, nor is the
18 controlling decision -- and it is the controlling
19 decision of the First Circuit. Hence I entered an order
20 in order to get an evidentiary record on which to
21 address the matter and the government has responded with
22 an affidavit from Mr. Yoon.

23 I do think we're clear that the statute has been
24 violated and therefore, before the government is
25 permitted to use the tapes, it must offer a satisfactory

1 explanation. I am better prepared, and the
2 responsibility for any lack of preparedness is mine
3 alone today in light of the statute and the decided
4 cases, and again I think 10 minutes will be sufficient
5 for argument and we'll start by hearing the government.

6 MR. GALLAGHER: Your Honor, we thought
7 appropriate that I address the argument since Mr. Yoon
8 has submitted an affidavit and that's the reason why I'm
9 here, your Honor.

10 THE COURT: I appreciate it.

11 MR. GALLAGHER: So --

12 THE COURT: Well, here's my problem, and my
13 problem is not in any way impugning the accuracy of
14 Mr. Yoon's affidavit, and I haven't heard any argument
15 as to that, though the affidavit is rather thin on the
16 "why," it explains the "what," but it doesn't explain
17 the "why." But what is missing entirely is anything
18 that has to do with the security of the evidence, which
19 is what the statute is addressed to.

20 I entered an order seeking affidavits. All I have
21 is Mr. Yoon's affidavit. We know the delay is contrary
22 to the statute. We know that it's the government's
23 burden of proof. And I have nothing. Go ahead.

24 MR. GALLAGHER: Your Honor, I read the order
25 and perhaps I misinterpreted it. I read it, um, and the

1 Court is asking for a factual basis for the reason for
2 the delay and as I look at the cases there is some
3 discussion about factual findings about why was this not
4 met, and the only thing I would say -- and before we get
5 to that, your Honor, is with regards to the first one.

6 Now, the first one -- the statute says is that the
7 recordings, the original recordings have to be available
8 to the Court upon expiration of the order. At least
9 with regards to the first one, I think what's clear is
10 that they're made available even before the order had
11 expired, in a sense that Mr. Yoon had arranged to get
12 the recordings sealed and at that point it really is, um
13 -- and would wait for the Court to respond, and in these
14 matters you always do. And but, I guess --

15 THE COURT: And what are you saying, they
16 didn't here?

17 MR. GALLAGHER: Well, they did. Well, they
18 did within a two-day period. But what happened -- what
19 was timely was the notification that "We have these
20 recordings, we want to seal them, and they're made
21 available to the Court upon that aspect."

22 And so I think it would be unreasonable to expect
23 for us to go to Judge O'Toole's house at 12:01 a.m. to
24 say, "Here's the recordings, Judge, would you please
25 seal them?"

1 THE COURT: What about an emergency judge? We
2 have a whole protocol on the judicial end of things,
3 that if the judge is not available -- I am not available
4 in the courthouse every day and I don't expect you to
5 come hunt for me. One of the great things about the
6 organization of this court is that I know that when I
7 leave the courthouse there is an emergency judge who can
8 act in my absence, and during the time that I'm
9 emergency judge, I take that obligation very seriously.

10 MR. GALLAGHER: Your Honor, we know you do.
11 But to answer that question, if the period of delay were
12 substantial -- and the case law kind of alludes to that,
13 the fact that maybe two days is still reasonable, but if
14 it was a substantial delay, if, for example Judge
15 O'Toole wasn't in the district for a period of time,
16 that's what we would have done. But in this case it was
17 not substantial, it was a delay, at the most, of three
18 days.

19 But the last one, during the same time that there
20 was a takedown of all the defendants, Mr. Yoon has other
21 responsibilities to defense counsel, to the magistrate
22 judge, for assuring timely court appearances, providing
23 discovery right away, so there's --

24 THE COURT: Is that a satisfactory explanation
25 under the case law?

1 MR. GALLAGHER: I believe it is, your Honor.
2 There's three different delays. We submit the first one
3 is not a delay at all and the only thing we could have
4 done better is perhaps found another judge, instead of
5 Judge O'Toole, in a quicker fashion, but that's not
6 usually how we do things, unless there's a substantial
7 delay and we should act quicker.

8 The second one was 11 hours --

9 THE COURT: When you say "that's not how we do
10 things," to what are you referring, is there a protocol?

11 MR. GALLAGHER: Well, the protocol is more the
12 practice. If your Honor --

13 THE COURT: Is it in writing?

14 MR. GALLAGHER: It is not in writing, your
15 Honor, but if a court is assigned a Title III affidavit,
16 you typically report back to that court, the progress,
17 and also you report back to the court for the sealing of
18 the recordings. That's the practice. I'm sure you're
19 familiar with that same practice, your Honor.

20 Is that required under the statute, can another
21 judge do it? Absolutely. But if you look at the case
22 law at that time, a delay of two days would not be
23 unreasonable for Mr. Yoon to be in that same window of,
24 um, not asking for a different judge to seal the disks.
25 If there were a longer delay, then perhaps it would be

1 incumbent on Mr. Yoon to go to a different judge, but in
2 this case a two-day delay was not substantial. It
3 doesn't prejudice the defendants, it doesn't cause --

4 THE COURT: But the statute doesn't require
5 that, the statute says that they will be sealed
6 immediately, there's a judicial gloss on that, and then
7 they say if that's not done, there must be a
8 satisfactory explanation. **Mora** makes clear what I'm
9 supposed to take into account and the first thing I'm
10 supposed to take into account is whether, by clear and
11 convincing evidence, the tapes have been secured. Now
12 I've heard representations about that, but as we sit
13 here I have no evidence on that at all. You're arguing,
14 based on the affidavit, about the other criteria that
15 explain the delay.

16 Go ahead.

17 MR. GALLAGHER: And that was what we're
18 responding to, your Honor, and I apologize if we were
19 not answering the Court's concern. The affidavits were
20 meant for the purpose solely of establishing the reason
21 for the delay, and we submit the first one was not a
22 delay because it was made immediately available to the
23 Court.

24 THE COURT: Do you want to say something about
25 the second?

1 MR. GALLAGHER: The second one was 11 hours
2 and the reason that is so was the fact that Mr. Yoon had
3 to attend to a friend who had a serious back injury. It
4 was AUSA Young Paik. I saw him in the office, he was --

5 THE COURT: But no one impugns the
6 explanation, it's that he's not the only one working on
7 this case, here you are. I guess a concern that the
8 Court has, now that I've reflected on the statute, is
9 the urgency with which the office -- and I'm not
10 reflecting on any particular individual, but with which
11 the office takes this statutory obligation. It is not,
12 as I had originally but erroneously conceived it, simply
13 a matter of authentication, and thus far no one has
14 impugned the good faith of the Office of the United
15 States Attorney and I do not.

16 All right. Let me hear from Mr. Apfel.

17 Mr. Apfel, so now we have the explanation for the
18 delay, um, again I haven't heard you impugn the good
19 faith, what under the statute and the decided law should
20 I do?

21 MR. APFEL: Well, your Honor, it's March,
22 we're almost upon April, and this boy who grew up in the
23 Bronx, three blocks from Yankee stadium, and my mind
24 turns to baseball, and, um, this case and Mr. Yoon's
25 conduct in particular, and the government's conduct,

1 reminds me of the rule in baseball that I suggest
2 applies here, namely "three strikes and you're out."

3 THE COURT: That's not -- powerful as baseball
4 is as an analogy, that's not the decided cases.

5 MR. APFEL: Well, in here our motion was filed
6 on December 12th of 2013. The government asked for an
7 extension after extension after extension presumably to
8 marshal the evidence of which we have yet to see any.

9 THE COURT: We have his affidavit, that's
10 evidence.

11 MR. APFEL: Well, I'll come to that in one
12 moment. But they filed their opposition on, um, January
13 31st, so almost two full months after the brief was
14 filed. No evidence whatsoever. I then filed a reply.
15 So that's Strike one.

16 I filed a reply within a week on February 6th and
17 we had a hearing eight days later. I thought for sure,
18 since on every page of my reply, I talked about the need
19 for evidence, we would see evidence at the hearing on
20 February 14th. We saw none. Then, your Honor, on
21 reconsideration -- that's strike two.

22 Then your Honor, on reconsideration, issued an
23 order on March 4th requiring the government to submit
24 affidavits with a satisfactory explanation -- an
25 explanation as defined by the case law, long settled in

1 this circuit, which requires four elements, the first of
2 which is the integrity one, and the government submits
3 an affidavit that, as your Honor I think aptly points
4 out, doesn't touch on the integrity of the tapes.

5 THE COURT: Well, I say I misled them. I mean
6 I was on the wrong foot -- I mean I try to be
7 transparent. I also try to be accurate. So I get off
8 on the wrong foot on the first hearing, you do the best
9 you can, and I leave it where I left it. What you
10 argued resonates with me. I take another look at it. I
11 can't go at it that way, so I issue an order. But I did
12 say what I said at the first hearing, "Well, we'll
13 handle authenticity at the time of trial and the
14 heightened risk to them is sufficient." I'm not trying
15 to reinvent the record in any way.

16 MR. APFEL: Your order seems to be clear, but
17 I'm not going to belabor the point, your order says
18 you'll hear oral argument -- as it turns out oral
19 argument is today, on whether the government has a
20 satisfactory explanation, and you required the
21 government to prepare affidavits in connection with this
22 hearing on a satisfactory explanation. And the case law
23 makes clear, the controlling case in the First Circuit
24 as well as Supreme Court precedent, makes clear that
25 part of the explanation has to include the integrity --

1 the maintenance and the integrity of the tapes.

2 So I think that on that ground alone, the fact
3 that the government has now had three tries, has not
4 come up with an explanation to explain -- with competent
5 evidence explaining how the T2S2 system works, no
6 competent evidence as to chain of custody, they have
7 just not come close to meeting their burden of proving
8 that the integrity of the tapes here were maintained by
9 clear and convincing evidence, they haven't produced any
10 evidence let alone clear and convincing evidence. And
11 that Mr. Yoon's affidavit, I think is separate and apart
12 from the integrity issue, it's just wholly inadequate.

13 He -- what he did was he took his initial
14 opposition and he removed the word "opposition" and then
15 plopped down the word "affidavit." There's nothing new
16 there. He doesn't even attach the e-mails. He's
17 talking about the explanation, but I would suggest, your
18 Honor, that this is not evidentiary even with respect to
19 the e-mail correspondence because it's a -- it's a best
20 evidence violation, it's a violation of Rule 1002, which
21 I haven't thought of in God-only-knows how many years.
22 But they haven't produced the original evidence.

23 Mr. Yoon, in his opposition, said that he was
24 quoting excerpts from the e-mails. Now all of a sudden
25 the affidavit, there's a suggestion that the excerpts

1 that are quoted are the whole of these e-mails. We
2 don't know what else was said in these e-mails. We
3 haven't seen the e-mails themselves and the e-mails are
4 the original writing and his affidavit here is not a
5 substitute for the original e-mails under Rule 1002.

6 Now, he provides information but he doesn't
7 provide anything that gives a satisfactory explanation
8 as to the cause for the delay. The statute says
9 "immediately," it doesn't say "leisurely," and in each
10 and every case what the e-mails -- if we accept them at
11 face value make clear, is that the government was
12 operating in an extraordinarily leisurely fashion.
13 What's most troubling about this is, putting aside the
14 cuteness of the "three strikes and you're out" analogy,
15 is there's no sense of urgency here, in any instance.
16 Look at them one by one.

17 With respect to Target Telephone Number 3, the --
18 it is terminated at 11:59 p.m. on March 15th, which is a
19 Friday. Mr. Yoon sends an e-mail to the clerk at 3:18
20 in the afternoon that Friday giving the clerk a heads-up
21 that the wire is going to be terminated later that
22 evening. But what does he say? Does he say, "Who's the
23 emergency judge, can we get together over the weekend?"
24 Instead he says --

25 THE COURT: Well, do you think that that's

1 required?

2 MR. APFEL: Yes, absolutely. Weekends count.
3 Under **Mora**, weekends count.

4 If you look at the District Court opinion in **Mora**,
5 I believe it's at 623, um, Fed 365, it talks about how
6 weekends count. And the government is saying, "Next
7 week, can you give me a time next week?" That's not --
8 that's not any sense of urgency, that's not seeking to
9 immediately make the tapes available. And
10 Mr. Gallagher's argument that they're made available by
11 a phone call, that's just not what the case law says and
12 that's not what the statute says. You don't make tapes
13 available by calling the clerk and saying, "Oh, by the
14 way, I have the tapes, when do you want to see them?"
15 Making them available is presenting them to the District
16 Court judge. They're not presented, they're not
17 presented in any way, shape or form by virtue of a
18 communication that occurs.

19 THE COURT: About three more minutes.

20 MR. APFEL: If you look at -- if you look at
21 each one of these in each and every case, I mean the
22 second one with regard to Target Telephones 4 and 5, um,
23 they are terminated at 11:59 p.m. on April 25 and that's
24 a Thursday. Mr. Yoon calls the District Court clerk at
25 10:36 in the morning the next day and says -- he doesn't

1 say "The tapes came down last night, the wire was
2 terminated last night, can we have time with the judge
3 this afternoon?" Again it's leisurely, it's "Can we set
4 up a time next week?" Next week. And then when next
5 week comes, again it's a leisurely pace that follows
6 just as with Target Telephone Number 3.

7 Then with the reupping of Target Telephones 4 and
8 5, it's even worse. There's a coordinated takedown on
9 May 9th and the wire's terminated at 11:00 a.m. on May
10 9th, which is a Thursday. The government doesn't even
11 get around to calling the District Court until three
12 days later and calls on a Sunday evidencing that on
13 occasion even the government does work on the weekends.

14 THE COURT: Now, they explain that, they
15 explain why.

16 MR. APFEL: But that's also not an explanation
17 under the case law. The case law makes clear that
18 inconvenience, having other things to do, is not an
19 excuse for not having the sense of urgency that's
20 required by the statute.

21 Your Honor, the questions that you have to ask in
22 a case like this is, "Was the delay here realistically
23 beyond the government's control?" The answer to that is
24 clearly, um, "No, it was within the government's
25 control." "Did the delay result from an honest

1 mistake?" If it results from an honest mistake, then
2 the government is excused. But here the delay --
3 according to the very e-mails that are attached to the
4 affidavit -- that are not attached to the affidavit,
5 that are assigned in the affidavit, the delay was
6 intentional.

7 THE COURT: Thank you. Well, intentional not
8 in the sense that they were seeking delay?

9 MR. APFEL: Not in that sense, but they were
10 certainly not a mistake, they were, as the case law puts
11 it, they were "matters of convenience," either for the
12 government or for the District Court clerk or both, and
13 matters of convenience are not good enough within the
14 statute.

15 THE COURT: Thank you. All right. Let me
16 speak with the clerk.

17 (Pause.)

18 THE COURT: This case is scheduled to commence
19 trial on Monday the 14th of April. I'm not continuing
20 it. On the record before me I have no choice but to
21 rule that at present the explanation is unsatisfactory.
22 The very first thing that I have to consider on an
23 evidentiary basis is the authenticity of the
24 recordings. I have no evidence that the authenticity of
25 the recordings, the chain of custody, has been adequate,

1 much the less clear and convincing evidence, and without
2 that I can't even get into an analysis of the other
3 three requirements of **Mora**.

4 So I'm not suppressing the tapes, though, as I've
5 now reflected, using a motion -- analogous to a motion
6 to suppress is not an improper way to raise this issue,
7 I simply, in accordance with the statute, I'm ruling
8 that as of today these tapes may not be admitted in
9 evidence and I'm not continuing the trial.

10 Now, if the government wants to appeal that,
11 that's fine, they can, I will enter, if the government
12 does appeal, a deep -- a more detailed legal
13 explication, but basically I don't have any evidence
14 sufficient to make the evaluation as to whether the
15 explanation is satisfactory. I know nothing about the
16 authenticity of the recordings.

17 Now, if the government seeks to cure this ruling,
18 and it's open to them to try to cure the ruling, then
19 let me make it clear, if I did not make it clear before,
20 and I think I did. I want affidavits that detail with
21 exquisite particularity as to each of these tapes from
22 every person who touched or had custody of them where
23 they were and what they were and how they were secured
24 in the interim between the end of the taping and the
25 sealing by the appropriate judicial officer. That's for

1 starters. I also want affidavits, further affidavits
2 either from Mr. Yoon or people within the Office of the
3 United States Attorney of the following. I want to see
4 the original e-mails in their entirety, but more than
5 that I want to know what the protocol is.

6 If the United States Attorney's Office -- and I
7 never worked in one, but I understand there's a manual
8 for operations of the U.S. Attorney's Office. If that
9 manual governs or says anything about sealing tapes, I
10 want to know what the manual says, and beyond the
11 manual, if the Attorney General has promulgated
12 instructions, orders, regulations, I want to know what
13 they are because my statutory duty is to figure out
14 whether this explanation I had been given is
15 satisfactory. And beyond the Attorney General I want to
16 know if there's a protocol within the United States
17 Attorney's Office, a written protocol.

18 Evidently -- and I certainly accept the
19 representations from the Assistant United States
20 Attorney, but evidently there isn't a protocol. Well,
21 if there isn't a protocol, I'd like an affidavit of what
22 people understand the practice to be and who is
23 responsible, not just who makes the line decision, but
24 does that have to be reviewed, does it have to be
25 reported.

1 And lastly, I want an affidavit from the United
2 States Attorney telling me whether, one, she is
3 satisfactory with the status of things as they now
4 stand, and if she's not, whether she's going to
5 promulgate a protocol, and if she does, I want to see
6 it.

7 Now, when I have all of the submissions the
8 government intends to submit, the defense has five days
9 from that day to file any further written brief that it
10 wants and I will rule upon the papers.

11 Are there any questions -- because I don't want
12 there to be questions, are there any questions about how
13 the Court intends to proceed? We'll turn to the
14 government.

15 MR. GALLAGHER: Your Honor, I just want to
16 make one very short point and that is the order that the
17 Court issued on March 4th states: "A satisfactory
18 explanation for its delay in sealing the wiretap." I
19 interpreted that differently than the Court did.

20 THE COURT: Okay, that may be so, but the
21 order is what it is and now I've made an order that is
22 sufficient to the proceedings. I hear your
23 explanation. I've made my ruling. Any questions?

24 MR. GALLAGHER: Well, the question is whether
25 or not the Court is going to compel the government to

1 produce internal memoranda, protocols with regards to --

2 THE COURT: Do you have any question about
3 that?

4 MR. GALLAGHER: Well, I have a concern about
5 that which I would have to consult with my office
6 about. As far as explaining to the Court what the
7 protocol is, I have no problem doing that.

8 THE COURT: I want to see the actual data, I
9 want to see the memoranda that say how this is supposed
10 to be done. And so have no doubt about it, I want to
11 see it. Because on whether you've offered a
12 satisfactory explanation, the explanation to date is not
13 satisfactory.

14 My job is to implement the statute. I'm going to
15 implement the statute. And I'm not in a position to
16 make the evaluation. First, I haven't gotten an
17 evidentiary basis as to the authenticity of these
18 tapes. Second, I don't know whether an explanation is
19 satisfactory until I understand how clearly things are
20 supposed to be done and what the sense of urgency, if
21 you are, is in the directives that's given to Assistant
22 United States Attorneys. So, yes, make no mistake, I
23 want it.

24 MR. GALLAGHER: And I would only offer to the
25 Court, um, to ask a question, is whether or not what the

1 government put on evidence through testimony about the
2 integrity of the recordings, which I suggest is not an
3 issue.

4 THE COURT: I'm not going to slip off into
5 holding some extended evidentiary hearing. I want
6 affidavits in exquisite detail from these people. I can
7 read and I'll read it on my own time and I'll make the
8 determination. The case will go to trial on the 14th of
9 April. That's when jeopardy will attach. And unless I
10 have changed the order as it now stands, these tapes
11 can't be used.

12 MR. GALLAGHER: Is there a particular date the
13 Court wants, because this may take some time, your
14 Honor.

15 THE COURT: They get five days to respond,
16 that's your spur, they get five days to respond. So if
17 you give them to me on the day before trial, at the very
18 best you couldn't put the tapes in until Day 4 of the
19 trial.

20 Do you see how the timing works?

21 MR. GALLAGHER: I do, your Honor. I would ask
22 just, if possible, um, maybe we could get a copy of the
23 transcript or get an order just like it, so I can
24 present this. I misread the first Court's order. I
25 don't want to misread it again.

1 THE COURT: I have a Court Reporter. You can
2 request a transcript. That's why I have a Court
3 Reporter.

4 Anyone else have a question?

5 MR. APFEL: I just have one request, your
6 Honor. If the government makes its submission or
7 submissions before March 26th, as you know I'm going to
8 be out of the country until the 31st.

9 THE COURT: Respectfully I can't help that.

10 MR. APFEL: I would just ask for an additional
11 two days, that's all.

12 THE COURT: No, denied. It's not only you and
13 you have support. When they make their submission, five
14 days thereafter you'll make your submission, I'll then
15 have a record, I'll make my ruling. I've given them a
16 chance to cure, but they don't have to jump through
17 these hoops, they can appeal and then everything is off
18 to one side.

19 But if they don't appeal, they'll comply or do
20 whatever they do, but once I have it, they've got to
21 make clear that's it because I'm not going to have it
22 dribbled out, and that's when your five days starts
23 running. I'll wait five days, I will try to be on top
24 of this because I know that trial is in the offing.
25 Once I have the reposit to whatever they submit, I will

1 make my ruling and it is a ruling. I don't think this
2 is an evidentiary matter.

3 And I'm particular -- this isn't suppression,
4 under the statute I have forbidden the admission into
5 evidence of these tapes because as things stand now the
6 explanation is not satisfactory.

7 MR. APFEL: You made yourself clear. Thank
8 you, your Honor.

9 THE COURT: Thank you. And no one else a
10 question? Thank you all. We'll recess.

11 (Ends, 2:30 p.m.)
12

13 C E R T I F I C A T E
14

15 I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
16 do hereby certify that the foregoing record is a true
17 and accurate transcription of my stenographic notes,
18 before Judge William G. Young, on Thursday, March 13,
19 2014, to the best of my skill and ability.
20

21
22 /s/ Richard H. Romanow 03-19-14

23 _____
RICHARD H. ROMANOW Date
24
25